

Jason N. Haycock (SBN 278983)
 Jason.Haycock@klgates.com
 K. Taylor Yamahata (SBN 347192)
 Taylor.Yamahata@klgates.com
K&L Gates LLP
 Four Embarcadero Center, Suite 1200
 San Francisco, California 94111
 Telephone: +1 415 882 8200
 Facsimile: +1 415 882 8220

*Attorneys for Plaintiff and Counterclaim
 Defendant*
 NETGEAR, INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

NETGEAR, INC.,

Plaintiff,

v.

CHOICE ELECTRONICS INC.,

Defendant.

Case No. 3:25-cv-02601-RS

**CASE MANAGEMENT
 STATEMENT**

District Judge: Hon. Richard Seeborg

CHOICE ELECTRONICS INC.,

Counterclaim-Plaintiff,

v.

NETGEAR, INC.

Counterclaim-Defendant.

Pursuant to the Court’s Electronic Order dated March 18, 2025 (ECF 5), the Standing Order for All Judges of the other District of California and L.R.16-9, Plaintiff/Counterclaim-Defendant NETGEAR, INC. (“NETGEAR” or “Plaintiff”) and Defendant/Counterclaim-Plaintiff Choice Electronics Inc. (“Choice Electronics” or “Defendant”) (together, “the Parties”) submit this Case Management Statement as follows:

1. Jurisdiction & Service

NETGEAR alleges that the Court has jurisdiction over the subject matter of its

1 claims this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and
2 (b). Choice Electronics alleges that this Court has subject matter jurisdiction over its
3 counterclaims pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201
4 and 2202; the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 et seq.,
5 including 15 U.S.C. § 1121; and 28 U.S.C. §§ 1331, 1338, and 1367. Choice
6 Electronics agrees that the Court has jurisdiction over this action. *See* Compl. ¶¶ 2- 4;
7 Answer, ¶¶ 2-4.

8 No issues exist regarding personal jurisdiction or venue, and all parties have
9 been served.

10 **2. Facts**

11 NETGEAR's Position:

12 NETGEAR alleges that Defendant is offering for sale “new” NETGEAR
13 Products, despite the fact that they are used, closed out, liquidated, counterfeit, and/or
14 non-genuine product of unknown origin. NETGEAR has never authorized Defendant
15 to sell NETGEAR Products and Defendant's wrongful and infringing promotion and
16 sale of NETGEAR Products through online commerce sites amounts to trademark
17 infringement, false advertising, false designation or origin and unfair competition
18 arising under the Lanham Act and Business and Professions Code §§ 17200 *et seq.*

19 Defendant advertises and sells NETGEAR branded products on several online
20 retail platforms, including, but not limited to, Amazon.com and Walmart.com, under
21 the seller name “Seller Choice Electronics’ (Serial Numbers Recorded)” (Amazon
22 Seller ID A18UQSTHS8A7FY). Specifically, Defendant advertises “new”
23 NETGEAR Products but fulfills orders with liquidated, used, or non-genuine product
24 of unknown origin. Customers of Defendant have complained of this conduct,
25 specifically alleging that Defendant “[s]ent me a defective unit and then have me 8
26 dollars for a refund on a 150\$ item. Don't buy here” and stating, “DO NOT BUY
27 FROM THIS SELLER!!!!!! Seller sent damaged item. Trying to say I did the
28 damage.”; “Item received didn't work and they still made me pay for return shipping

1 (\$100) and still didn't give full refund. Don't buy from these people."; "Received used
2 item with expired warranty"; and "There are 2 other labels under my address ship
3 label on the box. Appears this product was returned at least twice and then sold again
4 as new to me as a new product. Very very shady. They didn't even bother removing all
5 the old labels or getting a new box. Tons of shipping tape on it." Compl. ¶¶ 34-38.
6 Moreover, Defendant is manipulating the Amazon.com online review system and
7 falsely advertising positive online review scores in order to deceive customers and
8 improperly compete with NETGEAR for sales. *Id.* ¶¶ 41-64.

9 Defendant disputes these allegations.

10 Choice Electronics' Position:

11 This case relates to the sale of networking hardware over the internet and, in
12 particular, on Amazon.com ("Amazon"). Plaintiff manufactures and sells these
13 products under the NETGEAR brand ("NETGEAR Products"). Among a variety of
14 other items, Choice Electronics purchases genuine NETGEAR Products on the open
15 market and resells them through an Amazon storefront. Seeking to eliminate
16 competition on Amazon and maintain pricing for its products, Plaintiff filed the
17 present suit alleging various Lanham Act and state law claims. But it is well-
18 established that, under the "first sale doctrine," the resale of genuine trademarked
19 goods—like here—does not constitute trademark infringement, even if made without
20 the trademark owner's consent. *NEC Elecs. v. CAL Cir. Abco*, 810 F.2d 1506, 1509
21 (9th Cir. 1987) ("Trademark law generally does not reach the sale of genuine goods
22 bearing a true mark even though such sale is without the mark owner's consent.").
23 Plaintiff's false advertising claims likewise fail. NETGEAR's arguments that Choice
24 Electronics somehow suppresses or manipulates reviews is belied by the Complaint
25 itself. Specifically, by including quotes of purported generic "poor reviews"
26 demonstrates that all reviews—positive and negative—are readily viewable by
27 consumers for their consideration.

28 Choice Electronics also asserts counterclaims in this action seeking a

1 declaratory judgment of non-infringement (Counterclaim I) as well as monetary and
 2 injunctive relief for Plaintiff's false advertising (Counterclaim II), violations of
 3 California Business and Professions Code §§ 17200 *et seq* (Counterclaim III), and
 4 Deceptive Trade Practices Under N.Y. General Business Law ("GBL") § 349
 5 (Counterclaim IV).

6 These counterclaims stem from allegations that NETGEAR unfairly
 7 manipulates Amazon listings by using old listings for unrelated new products in order
 8 to show inflated and unwarranted reviews for the new products, thereby misleading
 9 consumers. Further, NETGEAR asserts that NETGEAR-branded product are covered
 10 by a warranty, but only when purchased from NETGEAR or an "authorized" reseller.
 11 But NETGEAR fails to comply with the federal requirements for consumer product
 12 warranties, and violates N.Y. G.B.L. § 369-b by attempting to limit the warranty to
 13 authorized resellers, thereby deceiving consumers regarding the legitimacy and
 14 lawfulness of that warranty and its purported limitation.

15 **3. Legal Issues**

16 NETGEAR's Position:

17 This is an action for trademark infringement, false advertising, false designation
 18 of origin, and unfair competition arising under the Lanham Act, 15 U.S.C. § 1051, *et*
 19 *seq.* and Business and Professions Code §§ 17200 *et seq.* from Defendant's wrongful
 20 and infringing promotion and sale of NETGEAR's products through online commerce
 21 sites, including but not limited to, Amazon.com and Walmart.com.

22 Choice Electronics' Position

23 NETGEAR has no viable claim; under the well-established "first sale doctrine,"
 24 the resale of genuine trademarked goods—like Choice Electronics' lawful resale of
 25 NETGEAR-branded products—does not constitute trademark infringement, even if
 26 made without the trademark owner's consent. *NEC Elecs. v. CAL Cir. Abco*, 810 F.2d
 27 1506, 1509 (9th Cir. 1987) ("Trademark law generally does not reach the sale of
 28 genuine goods bearing a true mark even though such sale is without the mark owner's

1 consent.”).

2 NETGEAR’s selling of new, unrelated products under pre-existing Amazon
3 listings so that it could cause the reviews from a prior product extend to the new,
4 unrelated product constitute false advertisement and unfair or deceptive acts or
5 practices. So do NETGEAR’s misrepresentations concerning its purported “warranty,”
6 which is invalid and violates state and federal laws, including but not limited to 15
7 U.S.C. § 2302 and N.Y. G.B.L. § 369-b.

8 **4. Motions**

9 There are no pending motions at this time.

10 **5. Amendment of Pleadings**

11 NETGEAR does not anticipate any amended complaints at this time but
12 reserves the right to amend pursuant to Rule 15(a)(2), should additional evidence be
13 discovered during the court of discovery. NETGEAR proposes that the deadline to
14 amend be 30 days after the close of fact discovery.

15 Choice Electronics does not anticipate amending its Counterclaims at this time
16 but reserves the right to amend pursuant to Rule 15(a) (e.g., should additional
17 evidence be discovered during the course of discovery).

18 **6. Evidence Preservation**

19 The parties certify that they have reviewed the Guidelines Relating to the
20 Discovery of Electronically Stored Information (“ESI Guidelines”), and have begun to
21 meet and confer pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and
22 proportionate steps taken to preserve evidence relevant to the issues reasonably
23 evident in this action. The Parties each believe that they are complying in good faith
24 with their obligations to preserve potentially relevant documents and evidence,
25 including electronically stored information ("ESI") as well as the products at issue.
26 The Parties will continue to meet and confer in an effort to reach an agreement further
27 delineating the procedures to be used in producing ESI.
28

1 **7. Disclosures**

2 The Parties have held several conferences to discuss their Rule 26(f)
3 obligations. Pursuant to the Federal Rules of Civil Procedure, the Parties have agreed
4 to make Rule 26 Initial Disclosures on or before June 20, 2025.

5 **8. Discovery**

6 No discovery has been taken to date. The Parties do not believe that limitations
7 or modifications of the discovery rules are necessary, except with respect to the
8 number of depositions discussed below. NETGEAR presently believes that the
9 subjects on which discovery may be needed include the following:

- 10 • Defendant's electronically stored information, which likely includes its
11 advertisements on Amazon.com, Walmart.com and elsewhere, communications
12 regarding NETGEAR Products, sales data, consumer complaints and related
13 communications concerning Defendant's sale of products, product sourcing
14 information, online posting information, and other relevant information.
- 15 • Defendant's hardcopy files, which likely include its advertisements,
16 communications, packaging, consumer complaints concerning its sales, sales
17 information, product sourcing information and other relevant information.

18 Choice Electronics presently believes that the subjects on which discovery may be
19 needed include the following:

- 20 • NETGEAR's marketing, advertising, distribution and sale of NETGEAR-
21 branded products on Amazon and other online marketplaces.
- 22 • NETGEAR's basis for its allegation that Choice Electronics offers for sale
23 "used, closed-out, liquidated, counterfeit, and/or non-genuine" NETGEAR-
24 branded products.
- 25 • NETGEAR's history of enforcement of Plaintiff's trademarks and related
26 tactics.
- 27 • NETGEAR's distribution network and related agreements.
- 28 • NETGEAR's sales and profits from the sale of NETGEAR-branded products.

- NETGEAR's creation and maintenance of ASINs for NETGEAR-branded products on the Amazon.com marketplace.
- NETGEAR's warranty practices concerning NETGEAR-branded products.

The Parties agree that there will be a need for a protective order. The Parties intend to enter a stipulation for protective order with two levels of confidentiality. The Parties intend to use the Northern District of California's model Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets and will submit it to the Court on or before July 1, 2025. The Parties also agree that they are each limited to 6 non-expert depositions unless good cause exists for additional depositions.

9. Class Actions

Not applicable.

10. Related Cases

Not applicable.

11. Relief

NETGEAR seeks the following relief:

A. Finding that, (i) as to Count I, Defendant's unauthorized sale of NETGEAR Products infringes on NETGEAR's registered trademark, in violation of 15 U.S.C. § 1114; (ii) as to Count II, Defendant's unauthorized sale of NETGEAR Products constitutes a false designation of origin, in violation of 15 U.S.C. § 1125(a); (iii) as to Count III, Defendant's false advertisement of NETGEAR Products constitutes false advertising, in violation of 15 U.S.C. § 1125(a); and (iv) as to Count IV and V, Defendant's actions constitute a violation of California and New York law, resulting in Defendant, its officers, agents, servants, employees, attorneys, and any other persons or entities acting in concert or participation with Defendant, including but not limited to any online platform such as Amazon.com or any other website,

1 website host, website administrator, domain registrar, or internet service
2 provider, being preliminarily and permanently enjoined from:

- 3 i. Using or attempting to use, any of NETGEAR's intellectual property,
4 including, but not limited to, the NETGEAR Marks;
- 5 ii. Advertising, selling, or taking any steps to sell, any products bearing
6 the NETGEAR Marks in an improper manner;
- 7 iii. Engaging in any activity constituting unfair competition with
8 NETGEAR; and
- 9 iv. Inducing, assisting, or abetting any other person or entity in engaging
10 in or performing any of the business activities described in the
11 paragraphs above.

12 B. Award NETGEAR its damages suffered as a result of Defendant's acts and
13 treble said damages as provided by law pursuant to 15 U.S.C. § 1117 and/or
14 California Business and Professions Code § 17200 et seq, and/or N.Y.
15 General Business Law § 349;

16 C. Award NETGEAR Defendant's profits as a result of Defendant's acts and
17 treble said damages as provided by law pursuant to 15 U.S.C. § 1117 and/or
18 California Business and Professions Code § 17200 et seq. and/or N.Y.
19 General Business Law § 349;

20 D. Award NETGEAR statutory damages of \$2,000,000.00 per mark pursuant to
21 15 U.S.C. § 1117(c);

22 E. Award NETGEAR exemplary and punitive damages in an appropriate
23 amount;

24 F. Enter judgment that Defendant's acts of infringement have been knowing
25 and willful;

26 G. Award NETGEAR its reasonable attorneys' fees in bringing this action as
27 allowed by law;

28 H. Award NETGEAR pre-judgment and post-judgment interest in the

1 maximum amount allowed under the law;

2 I. Award NETGEAR the costs incurred in bringing this action; and

3 J. Award NETGEAR such other relief as this Court deems just and proper.

4 Choice Electronics' seeks the following relief:

5 A. An order declaring that Choice Electronics has not infringed any valid and
6 enforceable intellectual property rights owned by Counterclaim-Defendants,
7 including the NETGEAR Registration;

8 B. Preliminary and permanent injunctive relief restraining NETGEAR, its
9 agents, servants, employees, successors and assigns, and all others in concert
10 and privity with NETGEAR, from engaging in further review manipulation
11 and engaging in other acts of false advertising, unlawful, unfair, and
12 fraudulent acts, and deceptive business practices;

13 C. An award of all damages that Choice Electronics has suffered as a result of
14 NETGEAR's false advertising;

15 D. Restitution and civil penalties for NETGEAR violations of California
16 Business and Professions Code §§ 17200 et seq.

17 E. An award of all damages that Choice Electronics has suffered as a result of
18 NETGEAR's deceptive trade practices under NY GBL § 349;

19 F. An award of all costs and fees incurred in this Action; and

20 G. Such other and further relief as the Court shall find just and proper.

21 **12.Settlement and ADR**

22 The parties agree that the case would benefit from mediation with a court-
23 appointed mediator.

24 **13.Other References**

25 The parties do not believe there is a need for a special master and do not believe
26 referral of this action to binding arbitration is indicated or appropriate.

27 **14.Narrowing of Issues**

28 The parties are not currently aware of any agreements that could narrow the

issues.

15.Scheduling

The parties propose the following dated for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial:

The Parties propose the following discovery plan:

	NETGEAR's Proposed Dates	Choice Electronics' Proposed Dates
Discovery-related Motions	December 12, 2025	October 24, 2025
Fact Discovery Cutoff	January 23, 2026	October 24, 2025
Expert Disclosures – Initial	March 27, 2026	November 21, 2025
Expert Disclosures – Rebuttal	May 8, 2026	December 19, 2025
Expert Discovery Cutoff	June 5, 2026	January 23, 2026
Deadline to file MSJ & <i>Daubert</i>	July 10, 2026	March 6, 2026
Final Pretrial Conference	Court's Discretion	Court's Discretion
Jury Trial	90 days after Final Pretrial Conference	90 days after Final Pretrial Conference

16.Trial

The Parties request a trial by jury of all issues so triable and believe that the estimated length of trial should last four days.

17.Disclosure of Non-party Interested Entities of Persons

NETGEAR and Choice Electronics has filed a Certification of Interested Entities or Persons required by Civil Local Rule 3-15 (ECF 7).

18.Professional Conduct

All counsel of record have reviewed the Guidelines for Professional Conduct

1 for the Northern District of California.

2 **19.Other**

3 NETGEAR is currently unaware of other matters that may facilitate the just,
4 speedy, and inexpensive resolution of this action.

5
6 Dated: June 20, 2025

K&L GATES LLP

7
8 By: /s/ K. Taylor Yamahata

9 Jason N. Haycock
K. Taylor Yamahata

10 *Attorneys for Plaintiff and*
11 *Counterclaim Defendant NETGEAR*
12 *Inc.*

13 TARTER KRINSKY & DROGIN LLP

14
15 By: /s/ Tyler R. Dowdall

16 Tyler R. Dowdall

17 *Attorney for Defendant and*
18 *Counterclaim-Plaintiff Choice*
19 *Electronics. Inc.*